

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

SHAWN HORNBECK, et al.	)	
each on behalf of himself	)	
and others similarly situated;	)	
	)	
Plaintiffs,	)	
	)	Case No. 18-00941-CV-W-BP
v.	)	
	)	
ORSCHELN FARM AND HOME, LLC	)	
d/b/a ORSCHELN FARM AND HOME,	)	
et al.	)	

**STATUS UPDATE**  
**AND JOINT MOTION TO APPROVE SETTLEMENT ADMINISTRATION**

COME NOW Plaintiffs and Defendants, by and through counsel, and provide the Court the following Status Update and Joint Motion to Approve Settlement Administration. This serves to provide the Court with an interim update as to the settlement administration to date. Further, due to the fact we are nearing completion of the final calculations and distributions in this case, we anticipate we will be able to file a final report upon completion of all payments and settlement administration activities by June 30, 2021.

The following is the interim update, which reports on the claims made for bucket purchases, as well as the claims made for equipment damages:

**I. Distribution of Bucket Payments to Class Members**

Significant payments have gone out to purchasers of buckets from the Purchase Price Reimbursement Relief portion of the Class Settlement Fund. On February 4<sup>th</sup>, \$6,068,574.00 was distributed to more than 30,000 Class Members for the bucket reimbursement relief portion of their valid claims. On February 19<sup>th</sup>, \$411,233.00 in distribution checks were mailed to additional Class Members. The last batch of bucket distribution checks totaling approximately \$85,000.00

are scheduled to be mailed on or before March 19<sup>th</sup> to additional Class Members who submitted valid claims. In addition to the reimbursements made for bucket claims, checks totaling \$95,000.00 have also been distributed out of the Class Settlement Fund for the nineteen Class Representative's Incentive Awards. Thus, the total distributions from the Purchase Price Reimbursement Relief portion of the Class Settlement Fund are scheduled to be \$6,659,807.00. (As noted below, if the determinations of any of the currently denied bucket claims are changed to valid, this number will increase, though the amount of increase would likely be very slight).

## **II. Denial of Invalid Bucket Claims**

Approximately \$3,500,000.00 in claims for bucket reimbursements were denied. Denial emails/letters went out throughout the last half of February to those persons whose bucket claims were denied, stating the reasons for the denials, which included the following:

- \* The specific product noted was included in this settlement but was not sold in the size listed or such sales were very limited, including 55-gallon drums;
- \* The specific 303 product noted was not sold in the state listed;
- \* The specific 303 product noted was not sold at the retailer listed;
- \* The specific 303 product noted was not included in the settlement for the time period listed;
- \* The claim did not provide a list of equipment and/or more information was needed regarding equipment;
- \* The claim has been determined to be otherwise invalid; and/or
- \* The claim did not provide complete product name, retailer, and/or location.

Each claimant was provided 21 days to contest the determination and provide additional information to support the claim. This final bucket claim process will be complete the bucket claim portion of the settlement.

### **III. Part B Claims for Repairs/Parts/Specific Equipment Damage**

RG/2, Class Counsel, and CITGO Counsel have performed a thorough review of Part B claims. That review has resulted in approval of claims submitted in accordance with the requirements of the Settlement Agreement and Notice documents, and rejection of claims that do not meet those requirements. More than \$2,000,000.00 in Part B claims were carefully reviewed and deemed invalid. However, approximately \$12,000,000.00 in Part B claims have been determined to be valid. Overall, it is presently estimated that approximately 600 of these Class Member Part B Claimants will receive at least 85% of their valid claim amount. As noted below, approximately 125 specific claimants whose claims were above \$20,000.00 have agreed separately to accept an additional reduction in their claim amount such that they will receive 70% of their valid claim amount. After all valid bucket and repair claims have been approved, CITGO will receive a reversion of \$1,150,000.00. The final and exact payment on each of these Part B Claims is expected to be determined the last week of March after completing the review of any bucket determination disputes. Class Counsel and RG/2 are anticipating distribution of the Part B checks by mid-April.

### **IV. Separate Agreement by Specific Claimants for CITGO Reversion**

Pursuant to the Settlement, CITGO had a right to contest and take to an Adjudicator each Part B claim and then to a reversion of any funds remaining after determination and payment of valid Part B claims. During the review process, which sometimes involved extensive review, approximately 125 claimants whose claims were above \$20,000.00 agreed that if they would be guaranteed a recovery of approximately 70% of their claims with no further adjudication, they would accept the same. After all bucket payments, all other Class Members with repair claims below \$20,000.00 are expected to receive at least 85% of their valid repair/damage claim amount.

As a result of that agreement, CITGO will receive a \$1,150,000.00 reversion from the additional 15% reduction specifically agreed to by the 125 largest claimants whose claims exceeded \$20,000.00. As such, the reversion of this amount to CITGO will not affect any of other Class Members' recovery amount. Payment of this amount is scheduled to be made to CITGO on March 19<sup>th</sup>. With this payment, CITGO will no longer be involved in any of the claim determinations made by the Settlement Administrator, RG/2, and Class Counsel.

**V. Settlement Administration and Notice Costs**

RG/2 estimated these costs to be \$709,000.00, and it has indicated it will complete the administration within that budget.

**VI. Overall Class Settlement Fund Summary**

\$18,825,000.00	Class Settlement Fund
(709,000.00)	RG/2 Settlement Administration and Notice
(95,000.00)	Class Representative Incentive Awards
(6,068,574.00)	2/4/21 Bucket Distribution Checks
(411,233.00)	2/19/21 Bucket Distribution Checks
(85,000.00)	3/19/21 Anticipated Bucket Distribution Checks
<u>(10,317,110.00)</u>	Estimated Amount Remaining for Part B Claims
1,150,000.00	Reversion to CITGO

As noted above, there may be some slight change in these numbers within the class based on reversals of initial bucket determinations. However, with agreements reached on no further CITGO claim challenges, we can report that of the \$12,000,000.00 in valid claims, 600 Class Members will receive at least 85% of their Part B claimed amount, while approximately 125 Class Members with claims over \$20,000.00 have separately agreed to receive 70% of their claimed amounts for repairs, parts, and/or specific equipment damage. It is anticipated that these distribution checks will go out in mid-April.

## VII. Conclusion and Request for Court Order

Class Counsel are very pleased with RG/2's administration of this Class Settlement and the significant distributions already made and about to be made to Class Members. The Parties request the Court's Order approving the Settlement Administration activity to date and those actions intended, as set forth above.

A proposed Order is being contemporaneously provided.

Date: March 16, 2021

Respectfully submitted,

HORN AYLWARD & BANDY, LLC

By: /s/ Dirk Hubbard  
Thomas V. Bender, MO Bar #28099  
Dirk Hubbard, MO Bar #37936  
2600 Grand, Ste. 1100  
Kansas City, MO 64108  
(816) 421-0700  
(816) 421-0899 (Fax)  
[tbender@hab-law.com](mailto:tbender@hab-law.com)  
[dhubbard@hab-law.com](mailto:dhubbard@hab-law.com)

WHITE, GRAHAM, BUCKLEY,  
& CARR, L.L.C

By: /s/ Gene P. Graham, Jr.  
Gene P. Graham, Jr. MO 34950  
William Carr MO 40091  
Bryan T. White MO 58805  
19049 East Valley View Parkway  
Independence, Missouri 64055  
(816) 373-9080 Fax: (816) 373-9319  
[ggraham@wagblaw.com](mailto:ggraham@wagblaw.com)  
[bcarr@wagblaw.com](mailto:bcarr@wagblaw.com)  
[bwhite@wagblaw.com](mailto:bwhite@wagblaw.com)

**CLAYTON JONES, ATTORNEY AT LAW**

By: /s/ Clayton A. Jones  
Clayton Jones MO51802  
P.O. Box 257  
405 W. 58 Hwy.  
Raymore, MO 64083  
Office: (816) 318-4266  
Fax: (816) 318-4267  
[claytonjoneslaw.com](http://claytonjoneslaw.com)

**LUNDBERG LAW FIRM, P.L.C.**

BY: /s/ Paul D. Lundberg  
Paul D. Lundberg. IA W00003339  
600 Fourth St., Suite 906  
Sioux City, Iowa 51101  
Tel: 712-234-3030  
[paul@lundberglawfirm.com](mailto:paul@lundberglawfirm.com)

**BOLEN ROBINSON & ELLIS, LLP**

BY: /s/ Shane M. Mendenhall  
Jon D. Robinson  
Joshua Rohrscheib  
Shane M. Mendenhall – ARDC No. 297182  
Zachary T. Anderson - ARDC No. 329384  
202 S. Franklin St., 2<sup>nd</sup> Floor  
Decatur, IL 62523  
Phone: 217-429-4296  
Fax: 217-329-0034  
Email: [jrohrscheib@brelaw.com](mailto:jrohrscheib@brelaw.com)  
Email: [smendenhall@brelaw.com](mailto:smendenhall@brelaw.com)  
Email: [zanderson@brelaw.com](mailto:zanderson@brelaw.com)

**ATTORNEYS FOR PLAINTIFFS  
AND CLASS MEMBERS**

-and-

EIMER STAHL LLP

/s/ Nathan P. Eimer

Nathan P. Eimer (PHV Application Forthcoming)

[neimer@eimerstahl.com](mailto:neimer@eimerstahl.com)

Susan M. Razzano (PHV Application Forthcoming)

[srazzano@eimerstahl.com](mailto:srazzano@eimerstahl.com)

224 South Michigan Avenue

Suite 1100

Chicago, IL 60604

Telephone: (312) 660-7600

Fax: (312) 692-1718

GREENSFELDER, HEMKER & GALE,  
P.C.

Abby L. Risner, MO # 57999

[alr@greensfelder.com](mailto:alr@greensfelder.com)

Robert L. Duckels, MO # 52432

[rld@greensfelder.com](mailto:rld@greensfelder.com)

10 S. Broadway, Suite 2000

St. Louis, MO 63102

Telephone: (314) 345-4785

Facsimile: (314) 345-5465

*Attorneys for Defendants CITGO Petroleum  
Corporation and Orscheln Farm and Home LLC  
d/b/a/ Orscheln Farm and Home*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document was filed electronically with the United States District Court for the Western District of Missouri, with notice of case activity to be generated and sent electronically by the Clerk of the Court to all designated persons this 16<sup>th</sup> day of March, 2021.

/s/ Dirk Hubbard